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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



FILE:



Office: Philadelphia

Date:

MAR 12 2001

IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert J. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 15, 1980 in the Dominican Republic. The applicant's father, [REDACTED], was born in the Dominican Republic on November 3, 1952 and became a naturalized U.S. citizen on August 3, 1988. The applicant's mother, [REDACTED], was born in May 1963 in the Dominican Republic and never became a United States citizen. The applicant's parents married each other in June 1980. The applicant was lawfully admitted for permanent residence on January 2, 1982. The applicant claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The acting district director determined that both of the applicant's parents failed to naturalize while he was under the age of 18 years and denied the application accordingly.

Section 321. CHILD BORN OUTSIDE OF UNITED STATES OF ALIEN PARENT;
CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents;
or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the

United States while under the age of 18 years.

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated the following: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's father became a naturalized U.S. citizen prior to his 18th birthday, (2) the applicant was legitimated shortly after his birth by his parent's marriage, and (3) he was residing in the United States in his father's legal custody as a lawful permanent resident when his father naturalized.

However, in order for the applicant to receive the benefits of § 321 of the Act, both of the applicant's parents must have naturalized pursuant to § 321(a)(1) of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant failed to establish that he automatically acquired U.S. citizenship solely through his father's naturalization. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.